

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANEITA HENRY-LEE, individually and as the
ADMINISTRATRIX of the Goods Chattels and
Credits of PETER C. A. LEE, deceased,

Plaintiffs,

- against -

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER JOHN
BAUMEISTER (shield # 24846), POLICE OFFICER
MICHAEL INGRAM (shield # 1727), KEVIN
ROUGHNEEN (shield # 2942), JOHN DOE 1-10 (the
fictitious names of persons yet to be identified), JMR
REST CORP., d/b/a RORY DOLANS RESTAURANT
BAR, CITY OF YONKERS and YONKERS POLICE
DEPARTMENT,

Defendants.
-----X

ANSWER TO COMPLAINT

Index No.: 08-cv-0089(DC)

Assigned to:
Hon. Denny Chin

The defendant, **JMR REST CORP., d/b/a RORY DOLANS RESTAURANT BAR**, by
its attorneys, **MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C.**, answering the complaint
of the plaintiffs herein, respectfully allege upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the truth of each
and every allegation contained in the paragraphs of the complaint designated as follows:

**“1”, “2”, “3”, “4”, “5”, “11”, “12”, “13”, “14”, “15”, “16”, “17”, “18”, “19”, “20”, “21”,
“22”, “23”, “24”, “25”, “26”, “32”, “33”, “34”, “35”, “36”, “37”, “38”, “39”, “40”, “41”,
“42”, “43”, “44”, “45”, “46” and “47”**

2. Admits each and every allegation contained in the paragraphs of the complaint
designated as follows:

“6”, “10” and “27”

3. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“7”, “8”, “9”, “28”, “29”, “30” and “31”

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“48”, “49” and “50”

and respectfully refers all questions of law raised therein to the trial court.

NOTICE OF CLAIM

5. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“51”, “52”, “53”, “54”, “55” and “56”

AS AND FOR THE FIRST CAUSE OF ACTION

6. In response to paragraph “57” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “56” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

7. Admit each and every allegation contained in the paragraph of the complaint designated as follows:

“58”

8. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“59”, “60”, “61”, “62”, “63”, “64”, “65”, “66”, “67”, “68”, “69”, “70”, “71”, “72”, “73”, “74”, “75”, “76”, “77”, “78”, “79”, “80”, “81”, “82”, “83”, “84”, “85” and “86”

9. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“87”

AS AND FOR THE SECOND CAUSE OF ACTION

10. In response to paragraph **“88”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “87” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

11. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“89”, “90”, “91”, “92”, “93”, “94” and “95”

12. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“96”

AS AND FOR THE THIRD CAUSE OF ACTION

13. In response to paragraph **“97”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “96” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

14. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“98”, “99”, “100”, “101”, “102” “106”, “107”, “108”, “109” and “110”

15. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“103”, “104” and “105”

and respectfully refers all questions of law raised therein to the trial court.

“106”, “107”, “108”, “109” and “110”

AS AND FOR THE FOURTH CAUSE OF ACTION

16. In response to paragraph “111” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “110” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

17. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“112”, “128” and “129”

18. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

**“113”, “114”, “115”, “116”, “117”, “118”, “119”, “120”,
“121”, “122”, “123”, “124”, “125”, “126” and “127”**

AS AND FOR THE FIFTH CAUSE OF ACTION

19. In response to paragraph “130” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “129” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

20. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“131”, “139” and “140”

21. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“132”, “133”, “134”, “135”, “136”, “137” and “138”

AS AND FOR THE SIXTH CAUSE OF ACTION

22. In response to paragraph “141” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “140” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

23. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“142”, “143”, “144”, “145”, “146”, “147”, “148”, “149”, “150” and “151”

AS AND FOR THE SEVENTH CAUSE OF ACTION

24. In response to paragraph “152” of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “151” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

25. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

**“153”, “156”, “157”, “158”, “159”, “160”, “161”, “162”,
“163”, “164”, “165”, “166”, “167”, “168”, “169” and “170”**

26. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“154” and “155”

AS AND FOR THE EIGHTH CAUSE OF ACTION

27. In response to paragraph **“171”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “170” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

28. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph of the complaint designated as follows:

“172”

29. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“173”, “174”, “175”, “176”, “177”, “178”, “179”, “180”, “181” and “182”

AS AND FOR THE NINTH CAUSE OF ACTION

30. In response to paragraph **“183”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “182” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

31. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“184”, “185”, “186”, “187”, 188”, “189”, “190”, “191”, “192”, “193”, “194” and “195”

AS AND FOR THE TENTH CAUSE OF ACTION

32. In response to paragraph **“196”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “195” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

33. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“197”, “198”, “199”, “200”, “201”, “202”, “203” and “204”

AS AND FOR THE ELEVENTH CAUSE OF ACTION

34. In response to paragraph **“205”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “204” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

35. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

**“206”, “207”, “208”, “209”, “210”, “211”, “212”, “213”,
“214”, “215”, “216”, “217”, “218”, 219”, “220”and “221”**

36. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“222” and “223”

AS AND FOR THE TWELFTH CAUSE OF ACTION

37. In response to paragraph **“224”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “223” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

38. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“225”, “226”, “227”, “228”, “229”, “230”, “231”, “232”, “233”, “236” and “237”

39. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“234”, “235”, “238” and “239”

AS AND FOR THE THIRTEENTH CAUSE OF ACTION

40. In response to paragraph **“240”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “239” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

41. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“241”, “249” and “250”

42. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“242”, “243”, “244”, “245”, “246”, “247” and “248”

AS AND FOR THE FOURTEENTH CAUSE OF ACTION

43. In response to paragraph **“251”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “250” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

44. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“252” and “253”

and respectfully refers all questions of law raised therein to the trial court.

45. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“254”, “258”, “259” and “260”

46. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“255”, “256” and “257”

AS AND FOR THE FIFTEENTH CAUSE OF ACTION

47. In response to paragraph **“261”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “260” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

48. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

**“262”, “263”, “264”, “265”, “266”, “267”,
“268”, “269”, “270”, “271”, “272” and “273”**

49. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“274” and “275”

AS AND FOR THE SIXTEENTH CAUSE OF ACTION

50. In response to paragraph **“276”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “275” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

51. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“277”, “278”, “279” and “280”

AS AND FOR THE SEVENTEENTH CAUSE OF ACTION

52. In response to paragraph **“281”** of plaintiffs’ complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “280” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

53. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the complaint designated as follows:

“282” and “283”

54. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“284”, “285”, “286”, “287”, “288” and “289”

**A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

55. That any damages, injury and/or injuries sustained by plaintiff was caused in whole or part by the culpable conduct and fault attributable to the plaintiff, including, but not limited to, contributory negligence and/or want of care, and/or the plaintiff’s assumption of the risk, and the amount recovered, if any, should be diminished pursuant to CPLR 1412 by the proportion which the culpable conduct attributed to the plaintiff’s bear to the culpable conduct which caused the damages, if any.

**AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

56. That any award recovered by plaintiff must be reduced by the receipt of collateral source payments.

**AS AND FOR A THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

57. The plaintiff has failed to join a necessary party.

WHEREFORE, defendant, **JMR REST CORP., d/b/a RORY DOLANS RESTAURANT BAR,** demands judgment against the plaintiff as follows:

(a) dismissing plaintiffs’ complaint, together with the costs and disbursements of this action;

(b) in the alternative, and in the event that plaintiffs prevail, the defendant, **JMR REST CORP., d/b/a RORY DOLANS RESTAURANT BAR,** demands judgment

determining the respective percentage of fault on the part of the defendant and plaintiffs, thereby reducing the amount of damages as against the answering defendant by the respective percentage of fault of the plaintiffs.

Dated: Elmsford, New York
April 2, 2008

By: _____
James M. Skelly (JMS/4844)

**MARKS, O'NEILL, O'BRIEN
& COURTNEY, P.C.**
Attorneys for Defendant
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DOLANS RESTAURANT BAR**
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File No.: 495.81515

TO: **THE ADAM LAW OFFICE, P.C.**
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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 : ss:
COUNTY OF WESTCHESTER)

MARTHA AGIS, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Pearl River, New York.

On the ____ day of April, 2008, deponent served the within **ANSWER TO COMPLAINT**, upon the parties herein stated below, by depositing and mailing same in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York, at the following addresses:

TO: **THE ADAM LAW OFFICE, P.C.**
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MARTHA AGIS

Sworn to before me on this
day of April, 2008

NOTARY PUBLIC